

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: FOREIGN ACQUISITIONS	DOCKET NO. RMU-00-10
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ORDER ADOPTING RULES

(Issued January 11, 2001)

Pursuant to the authority of Iowa Code §§ 17A.4, 476.76, and 476.77 (1999), the Utilities Board adopts the amendments attached hereto and incorporated by reference. These rules amend 199 IAC 32.2(4), which deals with public utility acquisitions outside the United States. The reasons for adopting these amendments are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making, identified as Docket No. RMU-00-10, is adopted.
2. The Acting Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 11th day of January, 2001.

UTILITIES DIVISION [199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.76, and 476.77 (1999), the Utilities Board (Board) gives notice that on January 11, 2001, the Board issued an order in Docket No. RMU-00-10, In re: Foreign Acquisitions, "Order Adopting Rules." The amendments to 199 IAC 32.2(4), which deals with public utility acquisitions outside the United States, change the test for determining whether a foreign acquisition qualifies for an exemption from the reorganization statutes and rules, Iowa Code sections 476.76 and 476.77.

On November 8, 2000, the Board issued an order to consider adopting amendments to 199 IAC 32.2(4). The proposed rule making was published in IAB Vol. XXIII, No. 11 (11/29/00) p. 883, as ARC 0302B. Alliant Energy, MidAmerican Energy Company, UtiliCorp United Inc. (UtiliCorp), and the Consumer Advocate Division of the Department of Justice filed written comments supporting the rules as noticed. Qwest Corporation (Qwest) filed comments generally supporting the rules but suggesting two minor changes. No oral presentation was scheduled or requested.

Currently, 199 IAC 32.2(4) provides that Board review of acquisitions outside the United States is not necessary in the public interest if certain conditions are met. First, the public utility does not receive more than 10 percent of its gross utility revenues from Iowa operations. Second, the public utility has not expended more than \$500 million in the current calendar year on foreign acquisitions. Third, the

aggregate value of foreign acquisitions does not exceed 30 percent of the net book value of the public utility's assets.

The adopted amendments eliminate the second and third tests and replace them with two new tests. First, the exemption will not apply if the public utility does not hold an investment grade credit rating from two major credit rating services. Second, the exemption will not apply if the acquisition exceeds 15 percent of the net book value of the public utility's assets.

The Board noticed the proposed rules in response to a petition for rule making filed by UtiliCorp. UtiliCorp noted in its petition for rule making that the rule changes would expedite its bidding process and provide the Board with information that will better allow it to judge the risks associated with a public utility's foreign investment strategy. The amendments require the public utility to have an investment grade rating from two major credit rating agencies before the exemption applies. Today, there are three major rating agencies. The amendments also require credit reports from all three agencies to be filed on an annual basis.

Qwest, in its comments, asked the noticed rule be revised to explicitly require that the filing of credit reports only apply to public utilities operating pursuant to an exemption. The Board believes this proposed change would add unnecessary verbiage to the adopted rule. The rule is already clear that the filing requirement only applies to those public utilities operating pursuant to an exemption. Qwest also asked the rule be revised to state that credit rating reports only have to be filed from major rating agencies "that have published such a rating." This proposed change also will not be adopted. The Board believes it is self-evident that, if a rating does

not exist, it cannot be filed. A statement that the public utility has not been rated by a particular rating agency will be sufficient. If a public utility has not been rated by one of the three major credit rating agencies, the utility would have to have investment grade ratings from the other two rating agencies or the exemption would not apply. If two of the three major rating agencies had not rated the utility, the utility could not qualify for the exemption.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 (17A, 474) is applicable to these rules.

The adopted amendments are identical to those published under the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 476.76 and 476.77.

The amendments will become effective on March 14, 2001.

The following amendments are adopted.

Amend subrule 32.2(4) as follows:

32.2(4) Notwithstanding the provisions of subrules 32.2(1) and 32.2(2), board review of acquisitions outside the United States by a public utility is not necessary in the public interest as long as the public utility does not receive more than 10 percent of its gross *utility* revenues from Iowa operations. The public utility is to notify the board and consumer advocate of any acquisitions which take place pursuant to the exemption within 30 days of the closing of the transaction. The notification shall

include the dollar amount of the acquisition, ~~and a description of the acquisition, and~~
~~a description of the financing. The public utility shall file on or before March 1 of~~
~~each year an annual summary of its foreign acquisitions and recent credit rating~~
~~reports from all major credit rating services.~~

~~However, this exemption does not apply once the public utility expends more~~
~~than \$500 million per calendar year on such acquisitions or if the aggregate value of~~
~~foreign acquisitions which take place after January 1, 1996, exceeds 30 percent of~~
~~the net book value of the public utility's assets. If one of these thresholds is met,~~
~~future acquisitions~~ However, this exemption does not apply if the public utility does
not hold an investment grade credit rating from two major credit rating services or if
its proposed direct expenditure on the acquisition, including guarantees and
financing with recourse to the public utility, exceeds 15 percent of the net book value
of the public utility's assets. If the exemption does not apply, the acquisition may not
take place without the filing of a proposal for reorganization or request for waiver. In
a rate case proceeding, the board may, upon proper showing, adjust the return on
equity to reflect any risk associated with the foreign acquisitions.

January 11, 2001

/s/ Allan T. Thoms

Allan T. Thoms
Chairperson